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9 Attorneys for Cord M. Asaoka

10 **UNITED STATES DISTRICT COURT**  
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

<p>12 Cord M. Asaoka,    13 Plaintiff,    14 v.    15 Fulton, Friedman &amp; Gullace, LLP    16 and Asset Acceptance, LLC,    17 Defendants.</p>	<p>18    19  <b>Case No: '13CV1740 CAB BGS</b>  <b>Complaint For Damages</b>  <b>Jury Trial Demanded</b></p>
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20 **INTRODUCTION**

21 1. The United States Congress has found abundant evidence of the use of  
 22 abusive, deceptive, and unfair debt collection practices by many debt  
 23 collectors, and has determined that abusive debt collection practices  
 24 contribute to the number of personal bankruptcies, to marital instability, to the  
 25 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair  
 26 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter  
 27 “FDCPA”), to eliminate abusive debt collection practices by debt collectors,  
 28 to insure that those debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote  
2 consistent State action to protect consumers against debt collection abuses.

3 2. The California legislature has determined that the banking and credit system  
4 and grantors of credit to consumers are dependent upon the collection of just  
5 and owing debts and that unfair or deceptive collection practices undermine  
6 the public confidence that is essential to the continued functioning of the  
7 banking and credit system and sound extensions of credit to consumers. The  
8 Legislature has further determined that there is a need to ensure that debt  
9 collectors exercise this responsibility with fairness, honesty and due regard  
10 for the debtor's rights and that debt collectors must be prohibited from  
11 engaging in unfair or deceptive acts or practices.

12 3. Cord M Asaoka, ("Plaintiff"), through Plaintiff's attorneys, brings this action  
13 to challenge the actions of Fulton, Friedman & Gullace, LLP ("Fulton") and  
14 Asset Acceptance, LLC, ("Asset"), collectively, ("Defendants"), with regard  
15 to attempts by Defendants to unlawfully and abusively collect a debt allegedly  
16 owed by Plaintiff, and this conduct caused Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception  
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which  
19 Plaintiff alleges on personal knowledge.

20 5. While many violations are described below with specificity, this Complaint  
21 alleges violations of the statutes cited in their entirety.

22 6. Unless otherwise stated, all the conduct engaged in by Defendants took place  
23 in California.

24 7. Any violations by Defendants were knowing, willful, and intentional, and  
25 Defendants did not maintain procedures reasonably adapted to avoid any such  
26 violation.

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## **JURISDICTION AND VENUE**

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
9. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").
10. Because Defendants conduct business within the State of California, personal jurisdiction is established.
11. Venue is proper pursuant to 28 U.S.C. § 1391.
12. At all times relevant, Defendants conducted business within the State of California.

## PARTIES

13. Plaintiff is a natural person who resides in the City of San Diego, State of California.
14. Fulton is located in the City of Concord, in the State of California.
15. Asset is located in the City of Warren, in the State of Michigan.
16. Plaintiff is obligated or allegedly obligated to pay a debt, and is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).
17. Defendants are persons who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and are therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).
18. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).

1 19. Defendants, in the ordinary course of business, regularly, on behalf of  
2 himself, herself, or others, engages in debt collection as that term is defined  
3 by California Civil Code § 1788.2(b), and are therefore debt collectors as that  
4 term is defined by California Civil Code § 1788.2(c).

5 20. This case involves money, property or their equivalent, due or owing or  
6 alleged to be due or owing from a natural person by reason of a consumer  
7 credit transaction. As such, this action arises out of a consumer debt and  
8 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

9 **FACTUAL ALLEGATIONS**

10 21. Sometime before May 8, 2013, Plaintiff is alleged to have incurred certain  
11 financial obligations.

12 22. These financial obligations were primarily for personal, family or household  
13 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.  
14 §1692a(5).

15 23. These alleged obligations were money, property, or their equivalent, which is  
16 due or owing, or alleged to be due or owing, from a natural person to another  
17 person and are therefore a “debt” as that term is defined by California Civil  
18 Code §1788.2(d), and a “consumer debt” as that term is defined by California  
19 Civil Code §1788.2(f).

20 24. Sometime thereafter, but before May 8, 2013, Plaintiff allegedly fell behind in  
21 the payments allegedly owed on an alleged debt to. Plaintiff currently takes  
22 no position as to the validity of this alleged debt.

23 25. Subsequently, on May 8, 2013, Fulton, on behalf of Asset, filed a collections  
24 lawsuit against Plaintiff in the Superior Court of San Diego, Case Number  
25 37-2013-00047814-CL-CL-CTL.

26 26. Plaintiff (Defendant in the Case 37-2013-00047814-CL-CL-CTL)  
27 subsequently retained counsel, whom promptly filed Plaintiff’s answer on  
28 May 19, 2013.

1 27. On or about July 12, 2013, Fulton, on behalf of Asset, mailed correspondence  
2 to Plaintiff at Plaintiff's home address for the purpose of collecting the debt.  
3 A few days later, Plaintiff received Defendants' mailed correspondence.

4 28. Through this conduct, and without exception, Defendants' communicated  
5 with a person other than the consumer for the purported purpose of acquiring  
6 location information after the Defendants' knew the consumer was  
7 represented by an attorney with regard to the subject debt and had knowledge  
8 of, or could have readily ascertain, said attorney's name and address.  
9 Consequently, Defendants' violated 15 U.S.C. § 1692b(6).

10 29. In Defendants' July 12, 2013 mailed correspondence to Plaintiff, Defendants'  
11 stated their intent to obtain a Default Judgement against Plaintiff.

12 30. Through this conduct, Defendants' made a false representation concerning the  
13 character, amount, or legal status of a debt. Consequently, Defendants'  
14 violated 15 U.S.C. § 1692e(2)(A).

15 31. Through this conduct, Defendants' threatened to take action that cannot  
16 legally be taken or that is not intended to be taken. Consequently,  
17 Defendants' violated 15 U.S.C. § 1692e(5).

18 32. Through this conduct, Defendants' used false representations or deceptive  
19 means to collect or attempt to collect a debt or to obtain information  
20 concerning a consumer. Consequently, Defendants' violated 15 U.S.C. §  
21 1692e and 15 U.S.C. § 1692e(10).

22 33. Because Defendants' conduct violated certain portions of the federal Fair  
23 Debt Collection Practices Act as these portions are incorporated by reference  
24 in the Rosenthal Fair Debt Collection Practices Act, through California Civil  
25 Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

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## CAUSES OF ACTION

## COUNT I

# FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

**(AS TO ALL DEFENDANTS)**

34. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
35. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
36. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendants.

## COUNT II

## **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)**

## CAL. CIV. CODE §§ 1788-1788.32

**(AS TO ALL DEFENDANTS)**

37. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
38. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32
39. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to

\$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendants.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, and Plaintiff be awarded damages from Defendants, as follows:

- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

Respectfully submitted,

## Hyde & Swigart

Date: July 25, 2013

By: s/Crosby S. Connolly  
Crosby S. Connolly  
Attorneys for Plaintiff